

S.B. NO. 2722

JAN 25 2012

A BILL FOR AN ACT

RELATING TO GOVERNMENT TORT ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 662-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§662-15 Exceptions. (a) This chapter shall not apply
4 to:

- 5 (1) Any claim based upon an act or omission of an employee
6 of the State, exercising due care, in the execution of
7 a statute or regulation, whether or not such statute
8 or regulation is valid, or based upon the exercise or
9 performance or the failure to exercise or perform a
10 discretionary function or duty on the part of a state
11 officer or employee, whether or not the discretion
12 involved has been abused;
- 13 (2) Any claim arising in respect of the assessment or
14 collection of any tax, or the detention of any goods
15 or merchandise by law enforcement officers;
- 16 (3) Any claim for which a remedy is provided elsewhere in
17 the laws of the State;

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- 1 (4) Any claim arising out of assault, battery, false
2 imprisonment, false arrest, malicious prosecution,
3 abuse of process, libel, slander, misrepresentation,
4 deceit, or interference with contract rights;
- 5 (5) Any claim arising out of the combatant activities of
6 the Hawaii national guard and Hawaii state defense
7 force during time of war, or during the times the
8 Hawaii national guard is engaged in federal service
9 pursuant to section 316, 502, 503, 504, 505, or 709 of
10 Title 32 of the United States Code;
- 11 (6) Any claim arising in a foreign country; or
- 12 (7) Any claim arising out of the acts or omissions of any
13 boating enforcement officer.

14 (b) The discretionary function exception in subsection
15 (a) (1) shall be interpreted so as to provide the State the same
16 type of protection from liability that the United States is
17 afforded pursuant to section 2680(a) of Title 28 of the United
18 States Code.

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

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Report Title:

Tort Actions

Description:

Clarifies certain limitations regarding the State's liability in tort cases and brings the State's liability in line with similar federal liability in many cases.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO GOVERNMENT TORT ACTIONS.

PURPOSE: The bill clarifies certain limitations upon State tort liability to interpret the discretionary function exception in the State Tort Liability Act to provide the State the same protection from liability that the United States is afforded pursuant to the Federal Tort Claims Act.

MEANS: Amend section 662-15, Hawaii Revised Statutes.

JUSTIFICATION: In 1957, the Legislature of the State of Hawaii passed the State Tort Liability Act (STLA), modeled after its federal counterpart, the Federal Tort Claims Act (FTCA). Most of the wording of the STLA was taken directly from the FTCA. At the time the Legislature adopted the STLA, its intent was generally to create the same types of potential tort liabilities for the State of Hawaii as the federal government created in the FTCA, with the same limitations on liabilities. Unfortunately, our courts have interpreted the STLA differently, in significant ways. The justification given by our courts is that the STLA should be liberally construed to effectuate its remedial purpose. However, in so interpreting the STLA, our courts fail to protect the State from liability in situations in which the federal government would be protected under the FTCA. In so construing the STLA, our courts dilute its protections for the State. Thus we can no longer interpret our STLA by referring to the decisions of the federal courts interpreting the FTCA. This should be

corrected through legislation such as the instant bill.

A case in point is Tseu v. Jeyte, 88 Haw. 85 (1998). In that case, the liability of the State was premised upon a claim of negligent investigation by the Hawaii Civil Rights Commission. The State should have prevailed under the federal precedent of Gaubert v. United States, 499 U.S. 315 (1991).

However, the Supreme Court of the State of Hawaii rejected the Gaubert decision as precedent for the STLA, and instead found potential liability. It did this even though discretion is obviously involved in the investigative process. The State's investigators, therefore, are now under a duty to protect from harm the very people they are investigating. Federal officials are not so burdened.

This bill amends section 662-15, Hawaii Revised Statutes, to clarify and preserve the immunity that protects the decision-making processes of the legislative and executive branches by protecting them from interference by the judicial branch or a jury.

Impact on the Public:

(1) Public moneys will be preserved for public benefits, without judicial second guessing of the Executive Branch's discretionary judgments, and consistent with the Legislature's intent as expressed in the State Tort Liability Act.

(2) Although this bill will limit plaintiffs' ability to recover damages from government entities as "deep pockets," the public in general will benefit from the saving of public funds.

Impact on the department and other agencies: This bill will protect the general fund from judgments against the

State based upon discretionary functions.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.